

AMENDED IN ASSEMBLY APRIL 5, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 804

Introduced by Assembly Member Yamada
(Coauthors: Assembly Members Ammiano, Fong, and Ma)

February 17, 2011

An act to amend Sections 2708, 3300, 3301, 3302, and 3303 of the Unemployment Insurance Code, relating to unemployment insurance, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 804, as amended, Yamada. Unemployment compensation: disability benefits: paid family leave.

Under existing law, the family temporary disability insurance program provides up to 6 weeks of wage replacement benefits to workers who take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption. These benefits are payable for family temporary disability leaves that begin on and after July 1, 2004.

This bill would expand the scope of the family temporary disability program to include time off to care for a seriously ill grandparent, grandchild, sibling, or parent-in-law, as defined. The bill would *also* make conforming and clarifying changes in provisions relating to family temporary disability compensation, *and would become operative on July 1, 2012.*

Under existing law, workers are required to pay contributions to the Unemployment Compensation Disability Fund, a special fund in the State Treasury, and those funds are continuously appropriated for the

purpose of providing disability benefits and making payment of expenses in administering those provisions.

This bill, by authorizing expenditure of money in the Unemployment Compensation Disability Fund for a new purpose, would make an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2708 of the Unemployment Insurance
2 Code is amended to read:

3 2708. (a) (1) In accordance with the director's authorized
4 regulations, and except as provided in subdivision (c) and Sections
5 2708.1 and 2709, a claimant shall establish medical eligibility for
6 each uninterrupted period of disability by filing a first claim for
7 disability benefits supported by the certificate of a treating
8 physician or practitioner that establishes the sickness, injury, or
9 pregnancy of the employee, or the condition of the family member
10 that warrants the care of the employee. For subsequent periods of
11 uninterrupted disability after the period covered by the initial
12 certificate or any preceding continued claim, a claimant shall file
13 a continued claim for those benefits supported by the certificate
14 of a treating physician or practitioner. A certificate filed to establish
15 medical eligibility for the employee's own sickness, injury, or
16 pregnancy shall contain a diagnosis and diagnostic code prescribed
17 in the International Classification of Diseases, or, ~~where~~ *if* no
18 diagnosis has yet been obtained, a detailed statement of symptoms.

19 (2) A certificate filed to establish medical eligibility of the
20 employee's own sickness, injury, or pregnancy shall also contain
21 a statement of medical facts including secondary diagnoses when
22 applicable, within the physician's or practitioner's knowledge,
23 based on a physical examination and a documented medical history
24 of the claimant by the physician or practitioner, indicating the
25 physician's or practitioner's conclusion as to the claimant's
26 disability, and a statement of the physician's or practitioner's
27 opinion as to the expected duration of the disability.

28 (b) An employee shall be required to file a certificate to establish
29 eligibility when taking leave to care for a family member with a
30 serious health condition. The certificate shall be developed by the

1 department. In order to establish medical eligibility of the serious
2 health condition of the family member that warrants the care of
3 the employee, the information shall be within the physician's or
4 practitioner's knowledge and shall be based on a physical
5 examination and documented medical history of the family member
6 and shall contain all of the following:

7 (1) A diagnosis and diagnostic code prescribed in the
8 International Classification of Diseases, or, ~~where~~ *if* no diagnosis
9 has yet been obtained, a detailed statement of symptoms.

10 (2) The date, if known, on which the condition commenced.

11 (3) The probable duration of the condition.

12 (4) An estimate of the amount of time that the physician or
13 practitioner believes the employee ~~is needed~~ *needs* to care for the
14 child, parent, grandparent, grandchild, sibling, spouse, or domestic
15 partner.

16 (5) (A) A statement that the serious health condition warrants
17 the participation of the employee to provide care for his or her
18 child, parent, grandparent, grandchild, sibling, spouse, or domestic
19 partner.

20 (B) "Warrants the participation of the employee" includes, but
21 is not limited to, providing psychological comfort, and arranging
22 "third party" care for the child, parent, grandparent, grandchild,
23 sibling, spouse, or domestic partner, as well as directly providing,
24 or participating in, the medical care.

25 (c) The department shall develop a certification form for bonding
26 that is separate and distinct from the certificate required in
27 subdivision (a) for an employee taking leave to bond with a minor
28 child within the first year of the child's birth or placement in
29 connection with foster care or adoption.

30 (d) The first and any continuing claim of an individual who
31 obtains care and treatment outside this state shall be supported by
32 a certificate of a treating physician or practitioner duly licensed
33 or certified by the state or foreign country in which the claimant
34 is receiving the care and treatment. If a physician or practitioner
35 licensed by and practicing in a foreign country is under
36 investigation by the department for filing false claims and the
37 department does not have legal remedies to conduct a criminal
38 investigation or prosecution in that country, the department may
39 suspend the processing of all further certifications until the
40 physician or practitioner fully cooperates, and continues to

1 cooperate with the investigation. A physician or practitioner
2 licensed by and practicing in a foreign country who has been
3 convicted of filing false claims with the department may not file
4 a certificate in support of a claim for disability benefits for a period
5 of five years.

6 (e) For purposes of this part:

7 (1) "Physician" has the same meaning as defined in Section
8 3209.3 of the Labor Code.

9 (2) "Practitioner" means a person duly licensed or certified in
10 California acting within the scope of his or her license or
11 certification who is a dentist, podiatrist, or a nurse practitioner,
12 and in the case of a nurse practitioner, after performance of a
13 physical examination by a nurse practitioner and collaboration
14 with a physician and surgeon, or as to normal pregnancy or
15 childbirth, a midwife or nurse midwife, or nurse practitioner.

16 (f) For a claimant who is hospitalized in or under the authority
17 of a county hospital in this state, a certificate of initial and
18 continuing medical disability, if any, shall satisfy the requirements
19 of this section if the disability is shown by the claimant's hospital
20 chart, and the certificate is signed by the hospital's registrar. For
21 a claimant hospitalized in or under the care of a medical facility
22 of the United States government, a certificate of initial and
23 continuing medical disability, if any, shall satisfy the requirements
24 of this section if the disability is shown by the claimant's hospital
25 chart, and the certificate is signed by a medical officer of the
26 facility duly authorized to do so.

27 (g) Nothing in this section shall be construed to preclude the
28 department from requesting additional medical evidence to
29 supplement the first or any continued claim if the additional
30 evidence can be procured without additional cost to the claimant.
31 The department may require that the additional evidence include
32 any or all of the following:

33 (1) Identification of diagnoses.

34 (2) Identification of symptoms.

35 (3) A statement setting forth the facts of the claimant's disability.
36 The statement shall be completed by any of the following
37 individuals:

38 (A) The physician or practitioner treating the claimant.

1 (B) The registrar, authorized medical officer, or other duly
2 authorized official of the hospital or health facility treating the
3 claimant.

4 (C) An examining physician or other representative of the
5 department.

6 SEC. 2. Section 3300 of the Unemployment Insurance Code
7 is amended to read:

8 3300. The Legislature finds and declares all of the following:

9 (a) It is in the public benefit to provide family temporary
10 disability insurance benefits to workers to care for their family
11 members. The need for family temporary disability insurance
12 benefits has intensified as the participation of both parents in the
13 workforce has increased, and the number of single parents in the
14 workforce has grown. The need for partial wage replacement for
15 workers taking family care leave will be exacerbated as the
16 population of those needing care, both children and parents of
17 workers, increases in relation to the number of working age adults.

18 (b) Family Temporary Disability Insurance shall be known as
19 Paid Family Leave.

20 (c) Developing systems that help families adapt to the competing
21 interests of work and home not only benefits workers, but also
22 benefits employers by increasing worker productivity and reducing
23 employee turnover.

24 (d) The federal Family and Medical Leave Act (FMLA) and
25 California's Family Rights Act (CFRA) entitle eligible employees
26 working for covered employers to take unpaid, job-protected leave
27 for up to 12 workweeks in a 12-month period. Under the FMLA
28 and the CFRA, unpaid leave may be taken for the birth, adoption,
29 or foster placement of a new child; to care for a seriously ill child,
30 parent, or spouse; or for the employee's own serious health
31 condition.

32 (e) State disability insurance benefits currently provide wage
33 replacement for workers who need time off due to their own
34 nonwork-related injuries, illnesses, or conditions, including
35 pregnancy, that prevent them from working, but do not cover leave
36 to care for a sick or injured child, spouse, parent, grandparent,
37 grandchild, sibling, or domestic partner, or leave to bond with a
38 new child.

39 (f) The majority of workers in this state are unable to take family
40 care leave because they are unable to afford leave without pay.

1 When workers do not receive some form of wage replacement
2 during family care leave, families suffer from the worker's loss of
3 income, increasing the demand on the state unemployment
4 insurance system and dependence on the state's welfare system.

5 (g) It is the intent of the Legislature to create a family temporary
6 disability insurance program to help reconcile the demands of work
7 and family. The family temporary disability insurance program
8 shall be a component of the state's unemployment compensation
9 disability insurance program, shall be funded through employee
10 contributions, and shall be administered in accordance with the
11 policies of the state disability insurance program created pursuant
12 to this part. Initial and ongoing administrative costs associated
13 with the family temporary disability insurance program shall be
14 payable from the Disability Fund.

15 SEC. 3. Section 3301 of the Unemployment Insurance Code
16 is amended to read:

17 3301. (a) (1) The purpose of this chapter is to establish, within
18 the state disability insurance program, a family temporary disability
19 insurance program. Family temporary disability insurance shall
20 provide up to six weeks of wage replacement benefits to workers
21 who take time off work to care for a seriously ill child, spouse,
22 parent, grandparent, grandchild, sibling, or domestic partner, or
23 to bond with a minor child within one year of the birth or placement
24 of the child in connection with foster care or adoption.

25 (2) Nothing in this chapter shall be construed to abridge the
26 rights and responsibilities conveyed under the CFRA or pregnancy
27 disability leave.

28 (b) An individual's "weekly benefit amount" shall be the amount
29 provided in Section 2655. An individual is eligible to receive
30 family temporary disability insurance benefits equal to one-seventh
31 of his or her weekly benefit amount for each full day during which
32 he or she is unable to work due to caring for a seriously ill or
33 injured family member or bonding with a minor child within one
34 year of the birth or placement of the child in connection with foster
35 care or adoption.

36 (c) The maximum amount payable to an individual during any
37 disability benefit period for family temporary disability insurance
38 shall be six times his or her "weekly benefit amount," but in no
39 case shall the total amount of benefits payable be more than the
40 total wages paid to the individual during his or her disability base

1 period. If the benefit is not a multiple of one dollar (\$1), it shall
2 be computed to the next higher multiple of one dollar (\$1).

3 (d) No more than six weeks of family temporary disability
4 insurance benefits shall be paid within any 12-month period.

5 (e) An individual shall file a claim for family temporary
6 disability insurance benefits not later than the 41st consecutive
7 day following the first compensable day with respect to which the
8 claim is made for benefits, which time shall be extended by the
9 department upon a showing of good cause. If a first claim is not
10 complete, the claim form shall be returned to the claimant for
11 completion and it shall be completed and returned not later than
12 the 10th consecutive day after the date it was mailed by the
13 department to the claimant, except that such time shall be extended
14 by the department upon a showing of good cause.

15 SEC. 4. Section 3302 of the Unemployment Insurance Code
16 is amended to read:

17 3302. For purposes of this part:

18 (a) "Care recipient" means the family member who is receiving
19 care for a serious health condition or the new child with whom the
20 care provider is bonding.

21 (b) "Care provider" means the family member who is providing
22 the required care for a serious health condition or the family
23 member who is bonding with the new child.

24 (c) "Child" means a biological, adopted, or foster son or
25 daughter, a stepson or stepdaughter, a legal ward, a son or daughter
26 of a domestic partner, or the person to whom the employee stands
27 in loco parentis.

28 (d) "Domestic partner" has the same meaning as defined in
29 Section 297 of the Family Code.

30 (e) "Family care leave" means any of the following:

31 (1) Leave to bond with a minor child within the first year of the
32 child's birth or placement in connection with foster care or
33 adoption.

34 (2) Leave to care for a child, parent, grandparent, grandchild,
35 sibling, spouse, or domestic partner who has a serious health
36 condition.

37 (f) "Family member" means child, parent, grandparent,
38 grandchild, sibling, spouse, or domestic partner as defined in this
39 section.

40 (g) "*Grandchild*" means a child of the employee's child.

1 (h) “Grandparent” means a parent of the employee’s parent.

2 ~~(g)~~

3 (i) “Parent” means a biological, foster, or adoptive parent, a
4 parent-in-law, a stepparent, a legal guardian, or other person who
5 stood in loco parentis to the employee when the employee was a
6 child.

7 ~~(h)~~

8 (j) “Parent-in-law” means the parent of a spouse or a domestic
9 partner.

10 ~~(i)~~

11 (k) “Serious health condition” means an illness, injury,
12 impairment, or physical or mental condition that involves inpatient
13 care in a hospital, hospice, or residential health care facility, or
14 continuing treatment or continuing supervision by a health care
15 provider, as defined in Section 12945.2 of the Government Code.

16 ~~(j)~~

17 (l) “Sibling” means a person related to another person by blood,
18 adoption, or affinity through a common legal or biological parent.

19 ~~(k)~~

20 (m) “Spouse” means a partner to a lawful marriage.

21 ~~(l)~~

22 (n) “Valid claim” means any claim for family temporary
23 disability insurance benefits made in accordance with the
24 provisions of this code, and any rules and regulations adopted
25 thereunder, if the individual claiming benefits is unemployed and
26 has been paid the necessary wages in employment for employers
27 to qualify for benefits under Section 2652 and is caring for a
28 seriously ill family member, or bonding with a minor child during
29 the first year after the birth or placement of the child in connection
30 with foster care or adoption.

31 ~~(m)~~

32 (o) “Twelve-month period,” with respect to any individual,
33 means the 365 consecutive days that begin with the first day the
34 individual first establishes a valid claim for family temporary
35 disability benefits.

36 SEC. 5. Section 3303 of the Unemployment Insurance Code
37 is amended to read:

38 3303. An individual shall be deemed eligible for family
39 temporary disability insurance benefits equal to one-seventh of
40 his or her weekly benefit amount on any day in which he or she is

1 unable to perform his or her regular or customary work because
2 he or she is bonding with a minor child during the first year after
3 the birth or placement of the child in connection with foster care
4 or adoption or caring for a seriously ill child, parent, grandparent,
5 grandchild, sibling, spouse, or domestic partner, only if the director
6 finds all of the following:

7 (a) The individual has made a claim for temporary disability
8 benefits as required by authorized regulations.

9 (b) The individual has been unable to perform his or her regular
10 or customary work for a seven-day waiting period during each
11 disability benefit period, with respect to which waiting period no
12 family temporary disability insurance benefits are payable.

13 (c) The individual has filed a certificate, as required by Sections
14 2708 and 2709.

15 *SEC. 6. This act shall become operative on July 1, 2012.*